

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

GORDON E. NEUENSCHWANDER
EXECUTIVE VICE PRESIDENT
& GENERAL COUNSEL

G. EDWARD YURCON
ASSISTANT GENERAL COUNSEL

RICHARD A. PORACH
ATTORNEY

RECORDATION NO. Filed 1425

324 P&LE TERMINAL BUILDING

PITTSBURGH, PA. 15219

PHONE (412) 261-3201

April 11, 1980 APR 14 1980 - 2 25 PM

INTERSTATE COMMERCE COMMISSION

0-105A143

No.

Date APR 14 1980

Fee \$ 50.00

ICC Washington, D. C.

Miss Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Miss Mergenovich:

Enclosed for filing with the Commission pursuant to
Section 11303(a) of the Interstate Commerce Act are the orig-
inal and four copies of the following document:

Railroad Equipment Lease, dated as of March
1980, between The Pittsburgh and Lake Erie Railroad
Company and Orchard Capital Management, Inc.

The names and addresses of the parties to the trans-
action are as follows:

OWNER: The Pittsburgh and Lake Erie Railroad
Company
Smithfield and Carson Streets
Pittsburgh, PA 15219

LESSEE: Orchard Capital Management, Inc.
7 East Redwood Street
Baltimore, MD 21203

The following is a general description of the rail-
road equipment covered by said document:

<u>No. of Units</u>	<u>Description</u>	<u>A.A.R. Mechanical Designation</u>	<u>Identifying Road Nos.</u>
203	35' 70-ton steel, covered hopper cars	LO	ERCX 80,000 - 80,202

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INTERSTATE
COMMERCE COMMISSION

APR 14 1980

ADMINISTRATIVE SERVICES
MAIL UNIT

Miss Agatha L. Mergenovich

-2-

April 11, 1980

Also enclosed is Pittsburgh and Lake Erie Railroad Company voucher, dated April 11, 1980, in the amount of \$50.00, payable to the Treasurer of the United States, to cover the filing fee prescribed by the Commission in its rules and regulations.

Please acknowledge receipt at your earliest convenience by stamping and returning to me the original and two copies of the document.

Very truly yours,

Richard A. Torack

Enclosures

RAILROAD EQUIPMENT LEASE

THIS AGREEMENT AND LEASE, dated as of the 21st day of March, 1980, by and between THE PITTSBURGH AND LAKE ERLE, **11673** RAILROAD COMPANY, hereinafter called "P&LE", and ORCHARD RECORDATION NO. Filed 1425 CAPITAL MANAGEMENT, INC., a subsidiary of Legg, Mason, Wood, APR 14 1980 - 2 25 PM INTERSTATE COMMERCE COMMISSION Walker, Inc., hereinafter called "Orchard".

W I T N E S S E T H :

1. Lease of Cars. P&LE agrees to lease to Orchard and Orchard agrees and does hereby lease from P&LE 203 steel covered hopper cars (any one of said cars hereinafter referred to as "Car" and more than one or all of which are hereinafter referred to as "Cars"), bearing numbers as set forth on Exhibit A, attached hereto and made a part hereof. The lease shall become effective as to any Car immediately upon its delivery pursuant to paragraph 2 hereof.

2. Delivery of Cars. P&LE shall deliver the Cars as promptly as is reasonably possible. Delivery of any Car to Orchard shall be effective upon the date when such Car has been accepted in interchange by a connecting railroad at such point as is designated by Orchard.

3. Condition of Cars - Acceptance. All Cars delivered hereunder shall be in satisfactory condition for movement in normal interchange service, shall comply with interchange rules and shall conform to the provisions and specifications of AAR Interchange Rule No. 88. Interchange rules shall mean



all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and other matters pertaining to the interchange of freight traffic applicable to the Cars, as adopted and in effect by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation which may be responsible for or have authority to impose such codes, rules, interpretations, laws or orders. The Cars shall be transported without cost to P&LE to such point as Orchard shall designate. Orchard will inspect all of the Cars on the lines of P&LE prior to their delivery in accordance with paragraph 2. Orchard agrees to accept the same without objection as to condition upon delivery provided that a Certificate of Acceptance is executed and delivered to P&LE by an officer of Orchard with respect to each such Car, within fifteen days of said inspection. Orchard shall not be responsible, however, for damage which may have occurred to any Car subsequent to said inspection but prior to delivery.

4. Use and Possession. During the term of this lease, so long as Orchard is not in default of the provisions hereunder, Orchard shall be entitled to possession of each Car from the date the lease becomes effective as to such Car, and the same may be used on its own property or lines and upon the lines of any other railroad in interchange service; provided, however, that the Cars shall be used only in the United States of America, Canada or Mexico for the transportation of sand or other non-corrosive commodities.

5. Term. This lease shall be for an initial term which shall commence on the date of delivery by P&LE and shall terminate ten (10) years from the first day of the month following the average date of delivery as defined by the formula in Exhibit B, attached hereto and made a part hereof. If Orchard has fully performed all of its obligations under this Agreement and Lease, Orchard may, by written notice to P&LE given no later than one hundred twenty (120) days prior to the conclusion of the preceding term or any renewal term, renew this lease for up to, but not exceeding, five (5) additional terms of one (1) year each. During any additional term or terms all of the provisions and conditions of this Agreement and Lease shall continue in effect.

6. Rental. As rental for the use of each Car, Orchard shall pay P&LE Two Hundred Seventeen Dollars (\$217.00) per month during the initial ten year period from the date of delivery thereof in accordance with the provisions of paragraph 2 hereof and Two Hundred Seventeen Dollars (\$217.00) per month for each month of any additional term retained in accordance with the provisions of paragraph 5 hereof. Orchard shall make monthly payments of the aforesaid rental to P&LE within fifteen (15) days from the end of each month. It is specifically agreed that Orchard will retain all Daily Time Charges and Mileage Charges attributable to the use of the Cars during the term of this lease.

7. Title. Orchard shall not by reason of this Agreement and Lease or any action taken hereunder acquire or



have any right or title in and to the Cars except as to the rights herein expressly granted to it as lessee.

8. Maintenance. During the continuance of this lease, Orchard shall promptly and with due diligence keep and maintain the Cars in good working order and repair, and make all replacements and repairs to the Cars or their equipment and appliances to the extent required by presently effective Interchange Rules of the Association of American Railroads and laws and regulations of any Federal, State or governmental body or department. In the event that any modifications are made in said Interchange Rules, laws or regulations during the term of this lease which would require expenditures exceeding thirty per cent (30%) of the value of any Car or Cars, Orchard shall have the right, upon written notice thereof, to terminate this Agreement and Lease with respect to any or all of the Cars affected by said modifications upon redelivery thereof in accordance with paragraph 15 hereof. Except as provided in the preceding sentence and in paragraph 14 hereof with respect to the loss or destruction of Cars, all of the foregoing maintenance and replacements shall be provided at the sole cost and expense of Orchard and without any reduction or abatement in rent or other loss, cost or expense to P&LE.

9. Additions to Cars. Any parts, replacements or additions made to any Car shall be accessions to such Car and title thereto shall be immediately vested in P&LE without cost or expense to P&LE. No additions or modifications are to be made to any Car without the prior written approval of P&LE.

10. Taxes. Orchard shall promptly pay all taxes, assessments and other governmental charges, including sales, use or ad valorem taxes, levied or assessed during the continuance of this lease upon the Cars or the interest of Orchard therein whether or not upon the use or operation thereof or the earnings derived therefrom. If any levy or assessment is made against P&LE on account of any of the foregoing matters or on account of its ownership of the Cars, exclusive, however, of any taxes on the rentals herein provided or the net income of P&LE therefrom, Orchard will promptly pay or reimburse P&LE for the same except that Orchard shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings protest the validity or amount of such levy or assessment.

11. Prohibition Against Liens. Orchard shall pay or set aside and discharge any and all sums claimed by any party by, through or under Orchard and its successors and assigns which, if unpaid, might become a lien or a charge upon the Cars. Orchard shall not be required, however, to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title in and to the Cars.

12. Identification of Cars. At all times during the continuance of this lease, Orchard will cause each Car

to bear the number assigned to it and appearing thereon as of the date of its delivery. Prior to acceptance of any Car, an agent, approved by P&LE, will paint the Cars and shall replace the P&LE markings thereon with Orchard markings. With respect to each Car bearing Orchard reporting marks, said agent shall plainly, distinctly and conspicuously stencil on each side of such Cars in letters not less than 3/4" in height the following legend:

"THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,
OWNER/LESSOR"

Upon termination of this lease for any reason, Orchard shall restore P&LE markings to all Cars prior to their redelivery to P&LE. All changes in markings made upon the Cars as provided herein shall be performed at the sole cost and expense of Orchard.

13. Indemnity. Orchard hereby agrees to forever indemnify, defend and save P&LE harmless from and against all expenses, damages, claims, actions, or liabilities based upon personal injury, death or property damage arising directly or indirectly out of or in connection with the condition, operation or use of all or any of the Cars from and after their delivery to Orchard until their redelivery to P&LE, whether or not due to the negligence in whole or in part of P&LE, its agents or employees, Orchard, its agents or employees, or of P&LE and Orchard, their agents or employees jointly.

14. Loss, Theft or Destruction of Cars. In the event that any Car shall be lost, stolen, destroyed or

irreparably damaged beyond economic repair from any cause whatsoever at any time during the term of this lease, Orchard shall be relieved of its obligation to pay rentals in respect of such Car from the date of such occurrence. Orchard shall forthwith advise P&LE of such occurrences, and shall make prompt settlement for each such Car by payment in cash to P&LE of a sum calculated, as of the date of said loss, theft, destruction or damage, in accordance with the prevailing rules applicable thereto in the Field Manual of the Interchange Rules prescribed by the Association of American Railroads, plus any unpaid rental and charges as herein provided to such date. Such settlement shall be made as soon as settlement is received from the railroad whereupon the damage occurred, but in no event later than 45 days after the occurrence. Upon payment of such settlement this lease shall terminate as to such Car as of said date and Orchard shall be entitled to salvage, if any.

15. Redelivery of Cars. Upon termination of this lease with respect to any Car (other than pursuant to paragraph 14 hereinabove), Orchard shall at its sole cost and expense immediately surrender possession of such Car by causing delivery of same to be made to P&LE at the nearest point or points on the lines of P&LE where cars are normally interchanged with connecting railroads. Orchard shall return all Cars to P&LE in as good condition (ordinary wear and tear excepted) as when the same were accepted by Orchard and in furtherance of this obligation, Orchard and P&LE shall perform a

joint inspection of all Cars prior to redelivery, each party to assume the expense of its own inspection. Such repairs as may be determined by said joint inspection to be required to place the Cars in as good condition (ordinary wear and tear excepted) as when accepted under this lease will be performed by Orchard at its sole expense prior to redelivery to P&LE. Until such time as each Car has been redelivered to P&LE, Orchard shall continue to pay rental at the rate being paid immediately prior to termination of this lease and Orchard shall make all other payments and perform all obligations and requirements of Orchard under all provisions of this lease as though such termination had not occurred.

16. Default. The term "event of default" for the purpose hereof shall mean any one or more of the following:

- (a) Non-payment by Orchard within ten (10) days after written notice to Orchard from P&LE of default in payment of rental or any other sum required to be paid hereunder by Orchard;
- (b) Orchard shall default or fail for a period of thirty (30) days in the observance or performance on its part under this Agreement and Lease, except as referred to in the foregoing clause (a), and said default or failure shall continue for a period of thirty (30) days after the giving of written notice thereof by P&LE;

- (c) A decree or order shall be entered by a court having jurisdiction in the premises adjudging Orchard, or its parent corporation, bankrupt or insolvent, or approving as properly filed a petition seeking reorganization under the Federal or State law;
- (d) The institution by Orchard, or its parent corporation, of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceeding or to any action taken or proposed to be taken in any proceeding described hereinabove in clause (c), or the making by Orchard, or its parent corporation, of a general assignment for the benefit of creditors.

17. Remedies. P&LE shall have the right in the event of default by Orchard to terminate this Agreement and Lease immediately by giving notice to Orchard, and P&LE may, without any notice of demand, take or cause to be taken immediate possession of the Cars and sell or otherwise dispose of the same, provided, however, that such retaking shall not be deemed a waiver of P&LE's right to receive payment of all sums payable by Orchard to P&LE under this Agreement and Lease, or any other rights or remedies conferred upon P&LE under applicable laws.

18. Recording. Orchard, immediately upon execution and without expense to P&LE, shall cause this lease to be filed with the Interstate Commerce Commission for recordation under Section 11303(a) of the Interstate Commerce Act.

19. Sublease and Assignment. Orchard shall not assign or sublease this lease or any of the Cars without the prior written consent of P&LE, which shall not be unreasonably withheld, provided, however, that Orchard has advised P&LE of its intention to sublease the cars to Excel Railcar Corporation, an Illinois corporation, with a principal office at 5501 Elinor Avenue, Downers Grove, Illinois 60515, only for use by Representaciones Generales, S.A., APBO Postal 986, Monterrey, Nuevo Leon, Mexico, which sublease is hereby approved by P&LE, with the condition that Orchard remains primarily responsible for all the obligations assumed under this lease; P&LE may sell or otherwise dispose of the Cars or may assign and reassign all or part of its rights under this lease, including the rent to be paid, without the consent of Orchard if said assignment or reassignment does not diminish, interfere or prejudice the rights of Orchard under this lease, and P&LE shall give to Orchard notice of any such assignment or reassignment; provided, however, that P&LE shall not make any sale or transfer of the Cars without first granting to Orchard the right to acquire the Cars upon the same terms and conditions as are being offered to any third party.

20. Successors and Assigns. The covenants,

conditions and agreements contained in this Agreement and Lease shall bind and inure to the benefit of the parties, their successors and assigns (to the extent permitted by paragraph 19 hereof).

21. Governing Laws - Amendments. The terms of this Agreement and Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania. The terms of this Agreement and Lease and the rights and obligations of the parties hereto may not be amended or terminated orally, but only by agreement in writing by the party against whom the enforcement of such amendment or termination is sought.

22. Execution. This Agreement and Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

WITNESS:

Richard A. Perach

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

By

G.E. Neuenschwander
G.E. Neuenschwander
Executive Vice President
and General Counsel

WITNESS:

Thomas J. Lubben

ORCHARD CAPITAL MANAGEMENT, INC.

By

Peter J. Dussene

FOR LEASE TO ORCHARD CAPITAL

The following P&LE cars will be renumbered to ERCX Series 80000-80202.

PLE Series 1300 - 1549 Lot #873 H

1301	1356	1412	1449	1496
1306	1358	1414	1451	1513
1314	1360	1415	1452	1521
1321	1361	1416	1458	1524
1323	1367	1417	1463	1526
1326	1370	1418	1464	1536
1327	1382	1419	1468	1537
1333	1389	1420	1469	1540
1337	1395	1428	1476	1541
1340	1398	1432	1480	1543
1349	1403	1437	1482	1548
1351	1407	1438	1483	
1352	1408	1446	1488	
1355	1409	1448	1489	

PLE Series 1550 - 1699 Lot #874 H

1550	1580	1612	1642	1671
1551	1581	1613	1643	1672
1552	1582	1614	1644	1673
1553	1584	1615	1645	1674
1556	1585	1616	1646	1675
1557	1586	1617	1647	1676
1558	1587	1618	1649	1677
1559	1589	1619	1650	1678
1560	1590	1620	1651	1679
1561	1591	1621	1652	1680
1562	1592	1622	1653	1681
1563	1593	1623	1654	1683
1564	1594	1624	1655	1684
1565	1595	1625	1656	1685
1566	1596	1626	1657	1686
1567	1597	1628	1658	1687
1568	1598	1629	1659	1688
1569	1600	1631	1660	1689
1570	1601	1632	1661	1690
1571	1602	1633	1663	1691
1572	1603	1634	1664	1692
1573	1604	1635	1665	1693
1574	1606	1636	1666	1694
1576	1607	1637	1667	1695
1577	1608	1639	1668	1696
1578	1609	1640	1669	1697
1579	1610	1641	1670	1698
				1699

For purposes of this Agreement, average date of delivery shall mean the date derived by multiplying the number of cars delivered on each date of delivery times the number of elapsed days from the first date of delivery and by dividing the total of the foregoing by a total number of cars delivered.

The above may be illustrated by the following example, which is for illustrative purposes only:

April 1, 1980 (1st date of delivery) - 50 cars delivered = 0 Car Days
April 11, 1980 - 50 cars delivered = 500 car days (10 elapsed days from 1st date of delivery X 50 cars)
May 3, 1980 - 50 cars delivered = 1600 car days (32 elapsed days from 1st day of delivery x 50 cars)
May 6, 1980 - 50 cars delivered = 1750 car days (35 elapsed days from 1st day of delivery X 50 cars)
Total Car Days = 3850 ÷ Total Number of Cars (200) = 19.25
Average Date of Delivery = April 20, 1980
(1st date of delivery, April 1, 1980, plus 19, average number of elapsed days from 1st day of delivery)

Termination is the first day of the month following the average date of delivery. Therefore, the Lease as to each Car will terminate on May 1, 1990. The commencement date of the Lease as to each Car is unaffected and will begin upon delivery of the particular Car.

EXHIBIT B



COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF ALLEGHENY)

On this 26th day of March, 1980, before me, the undersigned Notary Public, personally appeared G.E. NEUENSCHWANDER, who, being duly sworn by me, acknowledged that he is the Executive Vice President and General Counsel of The Pittsburgh and Lake Erie Railroad Company, that he executed the foregoing instrument for and on behalf of said company, and that the execution of the foregoing instrument was the free act and deed of said company.

Molly A. Tegeler
Notary Public

My Commission expires:

October 17, 1983



STATE OF
COUNTY OF

)
) ss:
)

On this 21st day of MARCH, 1980,
before me, the undersigned Notary Public, personally appeared
PETER J. GRESSENS who, being duly sworn accord-
ing to law, acknowledged that he is the President of Orchard
Capital Management, Inc., that he executed the foregoing in-
strument for and on behalf of said company, and that the exe-
cution of the foregoing instrument was the free act and deed
of said company.

Molly A. Segeter
Notary Public

My Commission expires:

October 17, 1983



Interstate Commerce Commission
Washington, D.C. 20423

4/22/80

OFFICE OF THE SECRETARY

Richard A Porach, Atty.
The P&LE RR. Co.
324 P&LE Terminal Building
Pittsburgh, PA. 15219

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/14/80 at 2:25pm, and assigned re-recording number(s). 11673

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)